

PUBLIC LAW BOARD NO. 1837

Award No. 95

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

Statement of Claim:

1. The thirty (30) day suspension assessed Machine Operator L. L. Hardy for his alleged conduct unbecoming an employee was without just and sufficient cause, based on an unproven and disproven charge and in violation of the Agreement (Carrier's File MW-FTW-92-42).
2. Machine Operator L. L. Hardy shall now be compensated for all wage loss suffered beginning October 1 through November 1, 1992.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The Claimant was properly found guilty of conduct unbecoming an employee because he admittedly used threatening and abusive language toward his supervisor. Despite his 14 years of employment, the Claimant admitted that he did act improperly, talked loud "but I didn't mean no harm by screaming", because "I was upset". He also admitted using profane language toward a supervisor.

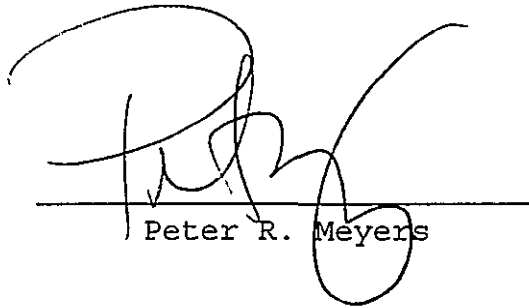
Once this Board has determined that there is sufficient evidence to support

the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

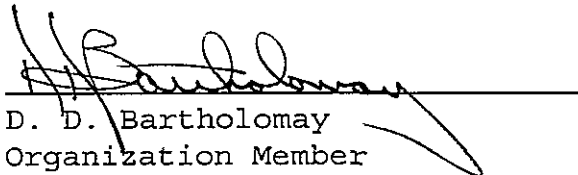
Given the serious wrongdoing on the part of the Claimant, this Board cannot find that the 30-day suspension issued by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

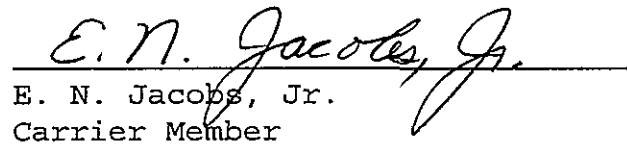
Claim denied.



Peter R. Meyers



D. D. Bartholomay  
Organization Member



E. N. Jacobs, Jr.  
Carrier Member

Issued at Chicago, IL on July 25, 1995.